

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM PATTERSON, as Personal
Representative of the Estate of BEVERLY J.
BALFOUR, Deceased,

Plaintiff-Appellee,

v

DAVID E. BALFOUR,

Defendant-Appellant.

UNPUBLISHED
February 24, 2004

No. 244707
Lapeer Circuit Court
LC No. 02-030991-NZ

FARM BUREAU MUTUAL INSURANCE
COMPANY,

Plaintiff/Counter-Defendant-
Appellee,

v

DAVID E. BALFOUR,

Defendant/Counter-Plaintiff-
Appellant.

No. 244785
Lapeer Circuit Court
LC No. 99-027106-CZ

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

In Docket No. 244707, defendant appeals, by leave granted, from the trial court's order granting partial summary disposition in favor of the personal representative of the decedent's estate regarding liability in a wrongful death action. In Docket No. 244785, defendant appeals as of right from the trial court's order granting summary disposition in favor of plaintiff insurance company in its action seeking declaratory relief and recovery of monies paid. By order dated February 3, 2003, the appeals were consolidated. We affirm.

The decedent, defendant's wife, was found dead in her burned home. It was determined that the fire was intentionally set. Following a jury trial, defendant was convicted of his wife's murder, arson, and insurance fraud.¹ The decedent's estate then filed a wrongful death action against defendant, and the insurance company filed suit against defendant to recoup monies paid pursuant to an insurance policy. In both cases, plaintiffs moved for summary disposition of their claims and, in support of summary disposition, relied on defendant's conviction. The trial court held that the conviction could be used in the civil proceedings and granted the motions for summary disposition.

Defendant alleges that the trial court erred in allowing plaintiffs to rely on his convictions. We disagree. This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A nonmoving party may not rely on mere allegations to demonstrate a genuine issue of material fact for trial. MCR 2.116(G)(4); *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 118 (2002). Rather, the existence of a disputed fact must be determined by admissible evidence proffered to oppose the motion. MCR 2.116(G)(6); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). Summary disposition is appropriate where the proffered evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 164.

In *Waknin v Chamberlain*, 467 Mich 329, 336; 653 NW2d 176 (2002), our Supreme Court ruled that a criminal conviction is admissible in a subsequent civil case based on the same underlying conduct. The Court explained that, in such circumstances, the fact that the defendant has been convicted based on conduct for which the plaintiff seeks civil damages is relevant evidence because it has a tendency to make the existence of a fact that is of consequence to the civil action more or less probable than it would be without the evidence. *Id.* at 333. Thus, there is no question that defendant's criminal conviction was admissible evidence in the civil actions.

Defendant did not offer anything, other than his pleadings, to suggest that there was a material question regarding his conduct or the occurrence and amount of Farm Bureau's payments under the policies. Defendant's attempt to rely on the denials set forth in his pleadings alone was insufficient to establish the existence of a question of material fact for trial. MCR 2.116(G)(4), *Rice*, *supra* at 31. Given the absence of material evidence establishing a question of material fact, the court properly granted plaintiffs' respective motions for summary disposition.²

¹ Defendant's convictions were affirmed by this Court. *People v Balfour*, unpublished opinion per curiam of the Court of Appeals, issued October 28, 2003 (Docket No. 242630). An application for leave to appeal is pending before the Supreme Court. Although not raised in the statement of questions presented, at the trial level, defendant asked about a remedy in the event his convictions were reversed. We note that defendant could pursue relief under the court rules in the event his convictions were reversed. See MCR 2.612.

² Because of our conclusion, we need not address defendant's argument regarding the application of the doctrine of collateral estoppel.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Richard A. Bandstra

/s/ Patrick M. Meter